

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

ELECTRONICALLY
FILED
Oct 22 2020
U.S. DISTRICT COURT
Northern District of WV

B&B WELDING AND FABRICATING, LLC
d/b/a B&B ENERGY SERVICES,

Plaintiff,

v.

WOOD WASTE RECYCLING, LLC,

Defendant.

Civil Action No. **5:20-CV-231 (Bailey)**

JURY TRIAL DEMANDED

COMPLAINT

AND NOW, comes Plaintiff, B&B Welding and Fabricating, LLC d/b/a B&B Energy Services (“B&B”), by and through its counsel, Pietragallo Gordon Alfano Bosick & Raspanti, LLP, and files the following Complaint:

NATURE OF ACTION

1. This is an action for breach of contract, fraud in the inducement, fraud, breach of implied warranty, negligence, and strict product liability stemming from a subcontract between B&B and Defendant, Wood Waste Recycling, LLC (“Wood Waste”) and Wood Waste’s sale of contaminated topsoil to B&B.

PARTIES

2. Plaintiff B&B is a West Virginia corporation with a primary business address at 1925 Lincoln Highway, Chester, West Virginia 26034.

3. Upon information and belief, Defendant Wood Waste is a Pennsylvania corporation with a primary business address at 111 Kelso Road, McDonald, Pennsylvania 15057.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and because Plaintiff and Defendant are citizens of different states.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2).

BACKGROUND

6. This action arises out of an agreement between B&B and MarkWest Liberty Midstream and Resources, LLC whereby B&B was to “[p]rovide all labor, tools, equipment, and materials for Schwab ROW restoration [(the “Project”)].” (True and correct copies of Purchase Orders reflecting the terms of this agreement are attached hereto as **Exhibit A**).

7. B&B and Wood Waste entered into a subcontract whereby Wood Waste agreed to provide B&B with raw topsoil for the Project. (True and correct copies of invoices reflecting the terms of this agreement are attached hereto as **Exhibit B**).

8. Raw topsoil is topsoil that comes from the ground.

9. Raw topsoil may contain sticks and stones but may not contain metal, nails, concrete, or other contaminants.

10. Wood Waste provided topsoil to B&B.

11. B&B utilized the topsoil provided by Wood Waste on the Project.

12. During B&B’s work on the Project and after delivery and application of Wood Waste’s topsoil, B&B became aware that Wood Waste’s topsoil was not raw and was heavily contaminated by nails.

13. The contaminated topsoil damaged the property on which B&B was working, forcing B&B to spend more than \$1.5 million to remove and replace Wood Waste's contaminated topsoil.

14. Wood Waste refused to remove and replace the contaminated topsoil or to reimburse B&B for its remediation costs.

COUNT I – BREACH OF CONTRACT

15. B&B hereby incorporates by reference Paragraphs 1-14 of this Complaint as though fully set forth herein.

16. Pursuant to the subcontract with B&B, Wood Waste agreed to provide raw topsoil for the Project. See Ex. A.

17. Raw topsoil is soil from the ground that is free from contaminants such as metal, nails, or concrete.

18. Wood Waste breached its obligation under the subcontract by providing topsoil contaminated with nails.

19. B&B was forced to spend more than \$1.5 million to remediate the property from damage caused by the contaminated topsoil.

20. As a direct and proximate result of Wood Waste's breach, B&B has suffered damages in excess of \$1.5 million.

WHEREFORE, Plaintiff B&B Welding and Fabricating, LLC d/b/a B&B Energy Services demands judgment be entered in its favor in an amount in excess of \$75,000.

COUNT II - FRAUD IN THE INDUCEMENT

21. B&B hereby incorporates by reference Paragraphs 1-20 of this Complaint as though fully set forth herein.

22. Wood Waste willfully and/or recklessly represented to B&B that it would provide B&B with raw topsoil for the Project.

23. Wood Waste's representation that the topsoil would be raw was material to B&B's decision to enter the subcontract.

24. When Wood Waste represented that its topsoil would be raw and free from contaminants, it knew the representation was false or it acted with reckless disregard for the truth of its representation.

25. Wood Waste intended for B&B to rely on its representation.

26. B&B justifiably relied on Wood Waste's representation.

27. As a direct and proximate result of Wood Waste's willful and/or reckless representation, B&B was forced to remediate the property by clearing and replacing the contaminated topsoil.

28. B&B seeks reimbursement of the more than \$1.5 million that it has spent to clear and replace the contaminated topsoil, in addition to consequential damages, punitive damages, attorneys' fees, costs, and any other relief to which it may be entitled.

WHEREFORE, Plaintiff B&B Welding and Fabricating, LLC d/b/a B&B Energy Services demands judgment be entered in its favor in an amount in excess of \$75,000.

COUNT III - FRAUD

29. B&B hereby incorporates by reference Paragraphs 1-28 of this Complaint as though fully set forth herein.

30. Pursuant to the parties' subcontract, Wood Waste agreed to provide raw topsoil for B&B's work on the Project. See Ex. A.

31. Raw topsoil is topsoil free from metal, nails, concrete, and other contaminants.

32. Wood Waste's representation that the topsoil would be raw was material to B&B's decision to enter the subcontract.

33. Wood Waste provided B&B with topsoil contaminated with nails.

34. B&B had justifiably relied on Wood Waste's representation that the topsoil provided for the Project would be raw.

35. As a direct and proximate result of its reliance on Wood Waste's representation, B&B was forced to spend more than \$1.5 million to remediate the property by clearing and replacing the contaminated topsoil.

36. Therefore, B&B seeks reimbursement of the more than \$1.5 million that it has spent to clear and replace the contaminated topsoil, in addition to consequential damages, punitive damages, attorneys' fees, costs, and any other relief to which it may be entitled.

WHEREFORE, Plaintiff B&B Welding and Fabricating, LLC d/b/a B&B Energy Services demands judgment be entered in its favor in an amount in excess of \$75,000.

COUNT IV – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

37. B&B hereby incorporates by reference Paragraphs 1-36 of this Complaint as though fully set forth herein.

38. B&B and Wood Waste entered a subcontract whereby Wood Waste would provide B&B with raw topsoil to be used on the Project. See Ex. A.

39. Wood Waste is a merchant engaged in the business of selling topsoil, mulch, soil blends, compost, playground surfacing, and aggregates.

40. Industry standard raw topsoil is topsoil from the ground that is free from metal, nails, concrete, and other contaminants.

41. Topsoil contaminated with nails is not industry standard raw topsoil and is not fit for the ordinary purposes for which raw topsoil is used.

42. Wood Waste provided B&B with topsoil contaminated with nails.

43. By providing B&B with topsoil contaminated with nails, Wood Waste breached the implied warranty of merchantability under West Virginia Code § 46-2-314.

44. Wood Waste acted culpably with regard to its production of the contaminated soil.

45. Wood Waste acted knowingly and recklessly when it provided B&B topsoil not fit for the ordinary purposes for which raw topsoil is used, and such production was outrageous, extreme, and egregious.

46. B&B was forced to spend more than \$1.5 million to remediate the property from the damage caused by Wood Waste's breach.

47. Therefore, B&B seeks reimbursement of the more than \$1.5 million that it has spent to clear and replace the contaminated topsoil, in addition to consequential damages, punitive damages, attorneys' fees, costs, and any other relief to which it may be entitled.

WHEREFORE, Plaintiff B&B Welding and Fabricating, LLC d/b/a B&B Energy Services demands judgment be entered in its favor in an amount in excess of \$75,000.

COUNT V – BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

48. B&B hereby incorporates by reference Paragraphs 1-47 of this Complaint as though fully set forth herein.

49. At the time B&B and Wood Waste contracted, Wood Waste knew the particular purpose for which B&B required raw topsoil.

50. B&B relied upon Wood Waste's skill and judgment to select and provide suitable raw topsoil for the Project.

51. The topsoil Wood Waste provided was not raw because it was heavily contaminated with nails.

52. Therefore, under West Virginia Code § 46-2-315, the topsoil provided was unfit for B&B's particular purpose.

53. Wood Waste acted culpably with regard to its production of the contaminated topsoil.

54. Wood Waste acted knowingly and recklessly when it provided B&B topsoil not fit for B&B's particular purpose, and such production was outrageous, extreme, and egregious.

55. B&B was forced to spend more than \$1.5 million to remediate the property from damage caused by Wood Waste's breach.

56. Therefore, B&B seeks reimbursement of the more than \$1.5 million that it has spent to clear and replace the contaminated topsoil, in addition to consequential damages, punitive damages, attorneys' fees, costs, and any other relief to which it may be entitled.

WHEREFORE, Plaintiff B&B Welding and Fabricating, LLC d/b/a B&B Energy Services demands judgment be entered in its favor in an amount in excess of \$75,000.

COUNT VI - NEGLIGENCE

57. B&B hereby incorporates by reference Paragraphs 1-56 of this Complaint as though fully set forth herein.

58. Wood Waste had a duty to B&B to deliver raw topsoil, free from metal, nails, concrete, and any other contaminants.

59. Wood Waste breached its duty by failing to inspect and verify that the topsoil was free from contaminants before delivering it.

60. Wood Waste further breached its duty by delivering contaminated topsoil to B&B.

61. As a direct and proximate result of Wood Waste's breach, B&B was forced to incur more than \$1.5 million in expenses to clear and replace the contaminated topsoil.

WHEREFORE, Plaintiff B&B Welding and Fabricating, LLC d/b/a B&B Energy Services demands judgment be entered in its favor in an amount in excess of \$75,000.

COUNT VII - STRICT PRODUCT LIABILITY

62. B&B hereby incorporates by reference Paragraphs 1-61 of this Complaint as though fully set forth herein.

63. Wood Waste is engaged in the business of selling topsoil, mulch, soil blends, compost, playground surfacing, and aggregates.

64. Wood Waste's topsoil is expected to and does reach the consumer in the condition in which it is sold.

65. The topsoil provided by Wood Waste to B&B was defective because it was contaminated with nails, and its defective condition was unreasonably dangerous to the property where it was utilized.

66. Wood Waste's topsoil was not reasonably fit, suitable, or safe for its intended use, and its foreseeable risks exceeded the benefits associated with its design.

67. Wood Waste's topsoil was contaminated with nails when it left Wood Waste's possession.

68. As a direct and proximate result of Wood Waste's defective and unreasonably dangerous topsoil, B&B was forced to spend more than \$1.5 million to remediate the property.

69. In addition, Wood Waste acted culpably with regard to its production of the contaminated soil.

70. Wood Waste acted knowingly and recklessly when it provided B&B with defective and unreasonably dangerous contaminated soil, and such production was outrageous, extreme, and egregious.

71. Therefore, B&B seeks reimbursement of the more than \$1.5 million that it has spent to clear and replace the contaminated topsoil, in addition to consequential damages, punitive damages, attorneys' fees, costs, and any other relief to which it may be entitled.

WHEREFORE, Plaintiff B&B Welding and Fabricating, LLC d/b/a B&B Energy Services demands judgment be entered in its favor in an amount in excess of \$75,000.

Respectfully submitted:

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